



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.431 of 2009

and

M.P. (MD) No.3 of 2009

The Divisional Manager  
Oriental Insurance Company Ltd.,  
Trichirappalli

: Appellant/2<sup>nd</sup> Respondent

-vs-

1.Subramanian

: 1<sup>st</sup> Respondent/Petitioner

2.K.Chinnammal

: 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decretal award dated 16.10.2006 made in M.C.O.P.No.301 of 2003, on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Kumbakonam.

For Appellant : Mr.K.Bhaskaran

For Respondents : Mr.A.Thiruvadikumar for R1  
No appearance for R2

### **J U D G M E N T**

This civil miscellaneous appeal is directed against the Judgment and Award, dated 16.10.2006, passed in M.C.O.P.No.301 of 2003, by the Motor Accident Claims Tribunal / Principal Subordinate Court, Kumbakonam.

2. The brief facts of the case are that on 13.07.2002, the first respondent / claimant was travelling as pillion rider in a TVS50 XL Motorcycle along with his brother Veeramani from Kuthalam Bazaar to Kadalangudi. When they were proceeding near Madalangudi, a Tractor bearing registration No.TN51 V7596 owned by the second respondent and insured with the appellant - Insurance Company came in a rash and negligent manner and dashed against the Motorcycle. In the accident, the claimant suffered severe injuries and was taken to Mayiladuthurai General Hospital for treatment and later he was



referred to Thanjavur Medical College. Alleging that the accident took place on account of the rash and negligent driving of the driver of the Tractor, he filed a claim petition claiming a compensation of Rs.6,00,000/-.

3. Resisting the claim, the appellant - Insurance Company filed a counter disputing the manner of accident, age, avocation and income of the claimant and their liability to pay the compensation.

4. In order to substantiate their case, on the side of the claimant P.Ws.1 and 2 were examined and Exs.P1 to P19 were marked and on the side of the Insurance Company, R.Ws.1 and 2 were examined and Exs.R1 to R6 were marked.

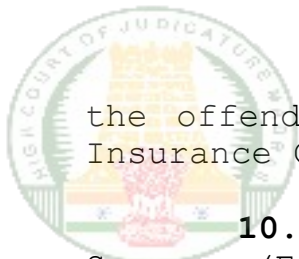
5. The Tribunal, on consideration of the evidence adduced by the parties, fixed negligence on the driver of the Tractor and awarded a compensation of Rs.1,80,000/- along with interest at the rate of 7.5% per annum. Challenging the Award passed by the Tribunal, the appellant - Insurance Company has filed the present appeal.

6. Mr.K.Bhaskaran learned counsel appearing for the appellant - Insurance Company, would contend that though the Insurance Company has examined two witnesses and marked Exs.R1 to R6, the Tribunal has not properly appreciated those evidence and made the Insurance Company liable to pay the compensation amount.

7. Per contra, Mr.A.Thiruvadikumar, learned counsel appearing for the first respondent / claimant, would contend that the Tribunal, on proper appreciation of the oral and documentary evidence, held that the accident took place only on account of the negligent driving of the driver of the Tractor and the findings of the Tribunal are based on the evidence and hence, the same need not be interfered.

8. Heard both sides and perused the materials available on record.

9. In the matter on hand, the Tribunal, while considering the issue with regard to liability, has analyzed the evidence of P.W.1 and Exs.P1 to P6 and held that the claimant has proved the manner of accident as set out in the claim petition and the Insurance Company has not produced any documentary proof to disprove the case of the claimant. As rightly pointed out by the learned counsel appearing for the first respondent / claimant, the said findings have been reached based on proper appreciation of evidence and no additional materials have been produced to substantiate the case of the appellant - Insurance Company. So, this Court does not find merit in the contention of the learned counsel for the appellant - Insurance Company. Admittedly, on the date of accident,



the offending vehicle had insurance coverage with the appellant - Insurance Company.

**10.** Insofar as quantum is concerned, as per the Discharge Summary (Ex.P7) issued by Thanjavur Medical College Hospital, it is seen that that the claimant has suffered three compound fractures in his femur and as per the Discharge Summary (Ex.P9) issued by Pondicherry Hospital, it is seen that the claimant suffered a compound fracture in his right femur and fracture on the right tibia. Dr.Srinivasan (P.W.2) has stated that the claimant suffered 79% disability. Based on these evidence, the Tribunal awarded Rs.50,000/- for the fractures; Rs.50,000/- for the medical expenses and transportation charges; Rs.80,000/- for the disability suffered by the claimant. In total, the Tribunal awarded Rs.1,80,000/- along with interest at the rate of 7.5% per annum, which in my considered opinion, is fair and reasonable and it does not warrant any interference of this Court.

**11.** In that view, the civil miscellaneous appeal is dismissed, as devoid of merits. Since the appeal is dismissed, the appellant - Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first respondent / claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

**Note :**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

krk



The Principal Sub Judge,  
Motor Accident Claims Tribunal,  
Kumbakonam.

Copy to: The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai. (2)

+1cc to Mr.K.Bhaskaran, Advocate, SR.No.25605.

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KMV(CO)  
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